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DEPARTMENT OF THE TREASURY

Community Development Financial Institutions Fund

12 CFR Part 1805

RIN 1505-AA92

Community Development Financial Institutions Program

AGENCY: Community Development Financial Institutions Fund, Department of the Treasury.

ACTION: Interim rule with request for comment.

SUMMARY: The Department of the Treasury is issuing an interim rule implementing the Community Development Financial Institutions Program (CDFI Program), administered by the Community Development Financial Institutions Fund (CDFI Fund). This interim rule includes revisions necessary to implement the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards published by the Department of the Treasury on December 19, 2014, as well as to make technical corrections and other updates to the current rule.

DATES: Effective date: [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]; all comments must be written and must be received in the offices of the CDFI Fund on or before [INSERT 60 DAYS FROM PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments concerning this interim rule via the Federal e-

Rulemaking Portal at <http://www.regulations.gov> (please follow the instructions for submitting comments). All submissions received must include the agency name and Regulatory Information Number (RIN) for this rulemaking. Other information regarding the CDFI Fund and its programs may be obtained through the CDFI Fund's website at <http://www.cdfifund.gov>.

FOR FURTHER INFORMATION CONTACT: Amber Kuchar, CDFI Program Manager, Community Development Financial Institutions Fund, at [cdfihelp@cdfi.treas.gov](mailto:cdfihelp@cdfi.treas.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Background

The CDFI Fund, Department of the Treasury, was authorized by the Community Development Banking and Financial Institutions Act of 1994, as amended (12 U.S.C. 4701 *et seq.*) (the Act). The purpose of the CDFI Fund is to promote economic revitalization and community development through investment in and assistance to Community Development Financial Institutions (CDFIs). The mission of the CDFI Fund is to increase economic opportunity and promote community development investments for underserved populations and in distressed communities in the United States. Its long-term vision is an America in which all people have access to affordable credit, capital, and financial services. The purpose of the CDFI Fund is to promote economic revitalization and community development through investment in and assistance to Community Development Financial Institutions (CDFIs). Through the CDFI Program, the CDFI Fund directly invests in, supports, and trains CDFIs that provide loans, investments, financial services, and technical assistance to underserved populations and communities by providing (i) financial assistance in the form of grants, loans, equity investments, and deposits to CDFIs and (ii) technical assistance grants to CDFIs and entities that

propose to become CDFIs, for the purpose of increasing their capacity to serve their Target Markets. The CDFI Fund provides such financial assistance to CDFIs to enhance their ability to make loans and investments, and to provide related services for the benefit of designated Investment Areas, Targeted Populations, or both. Awards are made through a competitive, merit-based application process.

Through the CDFI Program, the CDFI Fund uses Federal resources to invest in CDFIs and to build their capacity to serve low-income people and communities that lack access to affordable financial products and services. Through the CDFI Program, the CDFI Fund provides two types of monetary awards to CDFIs: financial assistance awards and technical assistance awards. Applicants participate in the CDFI Program through a competitive, merit-based quantitative and qualitative application and selection process in which the CDFI Fund makes funding decisions based on pre-established evaluation criteria. An entity may receive a CDFI Program award only after entering into an Assistance Agreement with the CDFI Fund that includes performance goals, matching funds requirements (if applicable), and reporting requirements.

On December 19, 2014, the Department of the Treasury published a final rule, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR Part 1000), which adopted the government-wide framework for grants management codified by the Office of Management and Budget (OMB) at 2 CFR 200 (the Uniform Requirements). The Uniform Requirements combine grant-related OMB guidance circulars — reducing the administrative burden for award Recipients and reducing the risk of waste, fraud, and abuse of Federal financial assistance — and establish financial, administrative, procurement,

and program management standards for Federal award-making agencies, including the CDFI Fund and its award Recipients.

On April 10, 2015, the CDFI Fund published in the Federal Register an amendment to the interim rule (80 FR 19195) modifying the certification requirements for CDFI Bond Guarantee Program participants seeking to meet the “financing entity” criterion of the CDFI certification requirements. The deadline for the submission of comments on the current rule was June 9, 2015.

## II. Comments on the April 10, 2015 Interim Rule

As of the close of the June 9, 2015 comment period, the CDFI Fund received no comments on the current rule.

## III. Summary of Changes

Throughout the rule, the defined term “Awardee” has been replaced by “Recipient.” Further, award funds being transmitted from the CDFI Fund to Recipients are referred to as payments, rather than disbursements. These changes were made to align the terminology in the CDFI Program regulations with the terms used in the Uniform Requirements. Other changes to the rule are specified below:

### A. Section 1805.102, Relationship to other CDFI Fund programs:

This section has been revised to clarify that the restrictions on entities applying for, receiving, and using CDFI Program awards, as well as awards through other CDFI Fund programs during the same annual award application cycle, will be described in the corresponding funding notices for those programs.

### B. Section 1805.104, Definitions:

As indicated above, the defined term “Awardee” has been removed and replaced with the defined term “Recipient”. The defined term “Fund” has been removed and replaced with the defined term “Community Development Financial Institutions Fund” so as to provide clear delineation between the CDFI Fund and the Capital Magnet Fund, another CDFI Fund program. The definition of “Comprehensive Business Plan” has been modified to better reflect the Act’s requirements for Comprehensive Business Plans submitted with funding applications. The definition of Development Services has been modified for clarity. The definition of “Financial Product” has been modified to eliminate grants by CDFI Intermediaries to CDFIs and/or emerging CDFIs from the definition. The CDFI Fund believes that this change is necessary to ensure that Recipients apply their financial assistance award funding directly to eligible activities rather than passing their financial assistance awards on to other CDFIs. “Uniform Requirements” has been added as a defined term. In addition, the paragraph numbering has been removed to allow for future modifications to the Definitions section without the need for re-numbering the entire section.

C. Section 1805.105, Uniform Requirements; Waiver authority:

Section 1805.105(a), Uniform Requirements, has been added to affirm that the Uniform Requirements will be applied to all awards made pursuant to this part, as applicable.

D. Section 1805.201, Certification as a Community Development Financial Institution:

Section 1805.201(b)(3)(ii)(B), Geographic Units, has been revised to better conform the description of eligible Investment Areas to the language of the Act. References to “American Indian or Alaska Native area” have been replaced with “Indian Reservation.”

Section 1805.201(b)(4), Development Services, has been revised to permit Development

Services to be offered in conjunction with Financial Services in order to meet the certification requirement that CDFIs must provide Development Services. Previously, only Development Services in conjunction with Financial Products met this requirement.

Section 1805.201(b)(5), Accountability, has been revised to require that a CDFI must demonstrate accountability to residents of its Target Market through representation on either its governing board or advisory board. Previously, other means of demonstrating accountability were permitted.

Section 1805.201(c), Records and Review, has been added to clarify that each certified CDFI is subject to periodic review by the CDFI Fund to ensure continued compliance with the CDFI certification requirements in this part, as well as to review the certified CDFI's organizational capacity, lending activity, community impacts, and such other information that the CDFI Fund deems appropriate. CDFIs will be required to provide, upon request, additional information and documentation to the CDFI Fund to facilitate this review.

E. Section 1805.502, Severe Constraints Waiver

Section 1805.502(c) has been revised to indicate that the terms of the severe constraints waiver will be set forth in the affected Recipient's Assistance Agreement.

F. Section 1805.504, Retained Earnings

Section 1805.504(a) has been revised to eliminate the restriction on Applicants submitting as matching funds those retained earnings that have been accumulated by the Applicant after the end of the Applicant's most recent fiscal year end prior to the application deadline. The CDFI Fund believes that this change will allow Applicants additional flexibility in attracting and obtaining matching funds.

Section 1805.504(c) has been revised to permit Insured Depository Institutions to use retained earnings that have been accumulated since the inception of the organization as matching funds for financial assistance awards. Previously, this option was only available to Insured Credit Unions and State-Insured Credit Unions.

Section 1805.504(c)(1)(iii)(D) has been revised to eliminate the July 31 date as a specified deadline for the measurement of required increases in member shares, non-member shares, outstanding loans, and other measurable activity. Under the current rule, Insured Credit Union and State-Insured Credit Union Applicants may use the increase in retained earnings since the inception of the organization as matching funds so long as they also demonstrate a required amount of increase in shares, loans, and other activity as described in the applicable Notice of Funds Availability. Due to fluctuations in the timing of the funding rounds, the July 31 date being fixed in the regulations made administration of this requirement challenging. With this revision, the CDFI Fund will have greater flexibility to schedule deadlines in the applicable Notice of Funds Availability relative to the application deadline therein.

G. Section 1805.701, Evaluation of Applications:

Section 1805.701(b) has been revised to more accurately reflect the application and selection requirements of the Act as indicated at 12 U.S.C. 4704, 4705, and 4706.

H. Section 1805.801, Notice of Award:

This section was removed as the CDFI Fund no longer uses Notices of Award (NOAs) that are separate from the Assistance Agreements.

I. Section 1805.803, Data Collection and Reporting

This section has been revised to accommodate the audit requirements of the Uniform

Requirements.

Section 1805.803(e)(1)(i) has been revised to conform to the Uniform Requirements. Per the Uniform Requirements and the interim rule, all non-profit organizations that are required to have their financial statements audited pursuant to the Uniform Requirements, must submit their single-audits to the Federal Audit Clearinghouse no later than nine months after the end of the Recipient's fiscal year. Under this rule, as indicated in the applicable Notice of Funds Availability and Assistance Agreement, non-profit organizations that are not required to have their financial statements audited pursuant to the Uniform Requirements may still be subject to additional audit requirements.

Section 1805.803(e)(2)(A) has been revised and simplified to eliminate some outdated report form references in favor of a description of the report types to be collected from Recipients on an annual basis. Specific reporting requirements using OMB Paperwork Reduction Act (PRA) approved information collections will be described in the applicable Notices of Funds Availability and Assistance Agreements.

#### IV. Rulemaking Analysis

##### A. Executive Order (E.O.) 12866

It has been determined that this regulation is not a significant regulatory action as defined in Executive Order 12866. Therefore, a Regulatory Assessment is not required.

##### B. Regulatory Flexibility Act

Because no notice of proposed rulemaking is required under the Administrative Procedure Act (5 U.S.C. 553) or any other law, the Regulatory Flexibility Act does not apply.

##### C. Paperwork Reduction Act



The collections of information contained in this interim rule have been previously reviewed and approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 and assigned the applicable, approved OMB Control Numbers associated with the CDFI Fund under 1559. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB. This document restates the collections of information without substantive change.

D. National Environmental Policy Act

This interim rule has been reviewed in accordance with the CDFI Fund's Environmental Quality regulations (12 CFR Part 1815), promulgated pursuant to the National Environmental Protection Act of 1969 (NEPA), which requires that the CDFI Fund adequately consider the cumulative impact proposed activities have upon the human environment. It is the determination of the CDFI Fund that the interim rule does not constitute a major federal action significantly affecting the quality of the human environment and, in accordance with the NEPA and the CDFI Fund's Environmental Quality regulations (12 CFR 1815), neither an Environmental Assessment nor an Environmental Impact Statement is required.

E. Administrative Procedure Act

Because the revisions to this interim rule relate to loans and grants, notice and public procedure and a delayed effective date are not required pursuant to the Administrative Procedure Act found at 5 U.S.C. 553(a)(2).

F. Comment

Public comment is solicited on all aspects of this interim rule. The CDFI Fund will

consider all comments made on the substance of this interim rule, but it does not intend to hold hearings.

G. Catalog of Federal Domestic Assistance Number:

Community Development Financial Institutions Program - 21.020.

List of Subjects in 12 CFR Part 1805

Community development, Grant programs - housing and community development, loan programs - housing and community development, reporting and recordkeeping requirements, small businesses.

For the reasons set forth in the preamble, 12 CFR part 1805 is revised to read as follows:

PART 1805--COMMUNITY DEVELOPMENT FINANCIAL INSTITUTIONS PROGRAM

Sec.

Subpart A--General Provisions

- 1805.100 Purpose.
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- 1805.401 Forms of investment instruments.
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#### Subpart E -- Matching Funds Requirements

- 1805.500 Matching funds--general.
- 1805.501 Comparability of form and value.
- 1805.502 Severe constraints waiver.
- 1805.503 Time frame for raising match.
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#### Subpart F -- Applications for Assistance

- 1805.600 Notice of Funds Availability.

#### Subpart G -- Evaluation and Selection of Applications

- 1805.700 Evaluation and selection--general.
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#### Subpart H -- Terms and Conditions of Assistance

- 1805.800 Safety and soundness.
- 1805.801 Assistance Agreement; sanctions.
- 1805.802 Payment of funds.
- 1805.803 Data collection and reporting.
- 1805.804 Information.
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- 1805.806 Conflict of interest requirements.
- 1805.807 Lobbying restrictions.
- 1805.808 Criminal provisions.
- 1805.809 CDFI Fund deemed not to control.
- 1805.810 Limitation on liability.
- 1805.811 Fraud, waste and abuse.

Authority: 12 U.S.C. 4703, 4703 note, 4710, 4717; and 31 U.S.C. 321.

#### Subpart A -- General Provisions

##### § 1805.100 Purpose.

The purpose of the Community Development Financial Institutions (CDFI) Program is to promote economic revitalization and community development through investment in and assistance to Community Development Financial Institutions.

§ 1805.101 Summary.

Through the Community Development Financial Institutions Program, the CDFI Fund provides financial and technical assistance to Recipients selected by the CDFI Fund in order to enhance their ability to provide Financial Products, Financial Services and Development Services to and in their Target Markets. Each Recipient must serve an Investment Area(s), a Targeted Population(s), or both. The CDFI Fund will select Recipients to receive financial or technical assistance through a merit-based, qualitative application process. Each Recipient must enter into an Assistance Agreement that requires it to achieve specific performance goals and abide by other terms and conditions pertinent to any assistance received under this part, as well as the Uniform Requirements, as applicable. All CDFI Program awards shall be made subject to funding availability.

§ 1805.102 Relationship to other CDFI Fund programs.

Restrictions on applying for, receiving, and using CDFI Program awards in conjunction with awards under other programs administered by the CDFI Fund (including, but not limited to, the Bank Enterprise Award Program, the Capital Magnet Fund, the CDFI Bond Guarantee Program, the Native American CDFI Assistance (NACA) Program, and the New Markets Tax Credit Program) are as set forth in the applicable Notice of Funds Availability, Notice of Guarantee Availability, or Notice of Allocation Availability.

§ 1805.103 Recipient not instrumentality.

No Recipient (or its Community Partner) shall be deemed to be an agency, department, or instrumentality of the United States.

§ 1805.104 Definitions.

For the purpose of this part, the following terms shall have the following definitions:

Act means the Community Development Banking and Financial Institutions Act of 1994, as amended (12 U.S.C. 4701 et seq.);

Affiliate means any company or entity that Controls, is Controlled by, or is under common Control with another company;

Applicant means any entity submitting an application for CDFI Program assistance or funding under this part;

Appropriate Federal Banking Agency has the same meaning as in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)), and includes, with respect to Insured Credit Unions, the National Credit Union Administration;

Appropriate State Agency means an agency or instrumentality of a State that regulates and/or insures the member accounts of a State-Insured Credit Union;

Assistance Agreement means a formal agreement between the CDFI Fund and a Recipient, which agreement specifies the terms and conditions of assistance under this part;

Community Development Financial Institution (or CDFI) means an entity currently meeting the requirements described in §1805.201;

Community Development Financial Institutions Fund (or CDFI Fund) means the Community Development Financial Institutions Fund established pursuant to section 104(a) (12 U.S.C. 4703(a)) of the Act;

Community Development Financial Institution Intermediary (or CDFI Intermediary) means an entity that meets the CDFI Program eligibility requirements described in §1805.200 and whose primary business activity is the provision of Financial Products to CDFIs and/or emerging CDFIs;

Community Development Financial Institutions Program (or CDFI Program) means the program authorized by sections 105-108 of the Act (12 U.S.C. 4704-4707) and implemented under this part;

Community Facility means a facility where health care, childcare, educational, cultural, or social services are provided;

Community-Governed means an entity in which the residents of an Investment Area(s) or members of a Targeted Population(s) represent greater than 50 percent of the governing body;

Community-Owned means an entity in which the residents of an Investment Area(s) or members of a Targeted Population(s) have an aggregate ownership interest of greater than 50 percent;

Community Partner means a person (other than an individual) that provides loans, Equity Investments, or Development Services and enters into a Community Partnership with an Applicant or a Recipient. A Community Partner may include a Depository Institution Holding Company, an Insured Depository Institution, an Insured Credit Union, a State-Insured Credit Union, a non-profit or for-profit organization, a State or local government entity, a quasi-government entity, or an investment company authorized pursuant to the Small Business Investment Act of 1958 (15 U.S.C. 661 et seq.);

Community Partnership means an agreement between an Applicant or Recipient and a

Community Partner to provide collaboratively Financial Products and/or Financial Services or Development Services to an Investment Area(s) or a Targeted Population(s);

Comprehensive Business Plan means a document, covering not less than the next five years, that demonstrates that the Applicant will be properly managed and will have the capacity to operate as a CDFI that will not be dependent upon assistance from the CDFI Fund for continued viability, and that meets the requirements described in an applicable Notice of Funds Availability;

Control or Controlling means:

(1) Ownership, control, or power to vote 25 percent or more of the outstanding shares of any class of Voting Securities of any company, directly or indirectly or acting through one or more other persons;

(2) Control in any manner over the election of a majority of the directors, trustees, or general partners (or individuals exercising similar functions) of any company; or

(3) Power to exercise, directly or indirectly, a controlling influence over the management, credit or investment decisions, or policies of any company.

Depository Institution Holding Company means a bank holding company or a savings and loan holding company as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813(w)(1));

Development Services means activities undertaken by a CDFI, its Affiliate or contractor that promote community development and shall prepare or assist current or potential borrowers or investees to use the CDFI's Financial Products or Financial Services. For example, such activities include, financial or credit counseling; homeownership counseling; and business

planning and management assistance;

Equity Investment means an investment made by a CDFI that, in the judgment of the CDFI Fund, supports or enhances activities serving the CDFI's Investment Area(s) or a Targeted Population(s). Such investments must be made through an arms-length transaction with a third party that does not have a relationship with the CDFI as an Affiliate. Equity Investments may comprise a stock purchase, a purchase of a partnership interest, a purchase of a limited liability company membership interest, a loan made on such terms that it has sufficient characteristics of equity (and is considered as such by the CDFI Fund); a purchase of secondary capital, or any other investment deemed by the CDFI Fund to be an Equity Investment;

Financial Products means loans, Equity Investments and similar financing activities (as determined by the CDFI Fund) including the purchase of loans originated by certified CDFIs and the provision of loan guarantees; in the case of CDFI Intermediaries, Financial Products may also include loans to CDFIs and/or emerging CDFIs and deposits in Insured Credit Union CDFIs, emerging Insured Credit Union CDFIs, and/or State-Insured Credit Union CDFIs;

Financial Services means providing checking, savings accounts, check cashing, money orders, certified checks, automated teller machines, deposit taking, safe deposit box services, and other similar services;

Indian Reservation means any geographic area that meets the requirements of section 4(10) of the Indian Child Welfare Act of 1978 (25 U.S.C. 1903(10)), and shall include: land held by incorporated Native groups, regional corporations, and village corporations, as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1602); public domain Indian allotments; and former Indian reservations in the State of Oklahoma;



Indian Tribe means any Indian Tribe, band, pueblo, nation, or other organized group or community, including any Alaska Native village or regional or village corporation, as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.). Each such Indian Tribe must be recognized as eligible for special programs and services provided by the United States to Indians because of their status as Indians;

Insider means any director, officer, employee, principal shareholder (owning, individually or in combination with family members, five percent or more of any class of stock), or agent (or any family member or business partner of any of the above) of any Applicant, Subsidiary, Affiliate, or Community Partner;

Insured CDFI means a CDFI that is an Insured Depository Institution or an Insured Credit Union;

Insured Credit Union means any credit union, the member accounts of which are insured by the National Credit Union Share Insurance Fund;

Insured Depository Institution means any bank or thrift, the deposits of which are insured by the Federal Deposit Insurance Corporation;

Investment Area means a geographic area meeting the requirements of §1805.201(b)(3);

Low-Income means income, adjusted for family size, of not more than:

- (1) For Metropolitan Areas, 80 percent of the area median family income; and
- (2) For non-Metropolitan Areas, the greater of:
  - (i) 80 percent of the area median family income; or
  - (ii) 80 percent of the statewide non-Metropolitan Area median family income;

Metropolitan Area means an area designated as such by the Office of Management and

Budget pursuant to 44 U.S.C. 3504(e) and 31 U.S.C. 1104(d) and Executive Order 10253 (3 CFR, 1949-1953 Comp., p. 758), as amended;

Non-Regulated CDFI means any entity meeting the eligibility requirements described in § 1805.200 and that is not a Depository Institution Holding Company, Insured Depository Institution, Insured Credit Union, or State-Insured Credit Union;

Nonvoting Securities or Nonvoting Shares. Preferred shares, limited partnership shares or interests, or similar interests are Nonvoting Securities if:

(1) Any voting rights associated with the shares or interest are limited solely to the type customarily provided by statute with regard to matters that would significantly and adversely affect the rights or preferences of the security or other interest, such as the issuance of additional amounts or classes of senior securities, the modification of the terms of the security or interest, the dissolution of the issuing company, or the payment of dividends by the issuing company when preferred dividends are in arrears:

(2) The shares or interest represent an essentially passive investment or financing device and do not otherwise provide the holder with control over the issuing company; and

(3) The shares or interest do not entitle the holder, by statute, charter, or in any manner, to select or to vote for the selection of directors, trustees, or partners (or persons exercising similar functions) of the issuing company.

Recipient means an Applicant selected by the CDFI Fund to receive assistance pursuant to this part;

State means any State of the United States, the District of Columbia or any territory of the United States, Puerto Rico, Guam, American Samoa, the Virgin Islands, and the Northern

Mariana Islands;

State-Insured Credit Union means any credit union that is regulated by, and/or the member accounts of which are insured by, a State agency or instrumentality;

Subsidiary means any company that is owned or Controlled directly or indirectly by another company and includes any service corporation owned in whole or part by an Insured Depository Institution or any Subsidiary of such a service corporation, except as provided in §1805.200(b)(4);

Targeted Population means individuals or an identifiable group of individuals meeting the requirements of §1805.201(b)(3);

Target Market means an Investment Area(s) and/or a Targeted Population(s);

Uniform Requirements means the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR part 1000), which is the Department of the Treasury's codification of the Office of Management and Budget (OMB) government-wide framework for grants management at 2 CFR part 200;

Voting Securities means shares of common or preferred stock, general or limited partnership shares or interests, or similar interests if the shares or interest, by statute, charter, or in any manner, entitle the holder:

(1) To vote for or select directors, trustees, or partners (or persons exercising similar functions of the issuing company); or

(2) To vote on or to direct the conduct of the operations or other significant policies of the issuing company.

§ 1805.105 Uniform Requirements; Waiver authority.

(a) Uniform Requirements. The Uniform Requirements will be applied to all awards made pursuant to this part, as applicable.

(b) Waiver authority. The CDFI Fund may waive any requirement of this part that is not required by law upon a determination of good cause. Each such waiver shall be in writing and supported by a statement of the facts and the grounds forming the basis of the waiver. For a waiver in an individual case, the CDFI Fund must determine that application of the requirement to be waived would adversely affect the achievement of the purposes of the Act. For waivers of general applicability, the CDFI Fund will publish notification of granted waivers in the Federal Register.

§ 1805.106 OMB control number.

The collection of information requirements in this part have been approved by the Office of Management and Budget and assigned applicable, approved OMB Control Numbers associated with the CDFI Fund under 1559.

Subpart B -- Eligibility

§ 1805.200 Applicant eligibility.

(a) General requirements. (1) An entity that meets the requirements described in §1805.201(b) and paragraph (b) of this section will be considered a CDFI and, subject to paragraph (a)(3) of this section, will be eligible to apply for assistance under this part.

(2)(i) An entity that proposes to become a CDFI is eligible to apply for assistance under this part if the CDFI Fund:

(A) Receives a complete application for certification from the entity within the time period set forth in an applicable Notice of Funds Availability; and

(B) Determines that such entity's application materials provide a realistic course of action to ensure that it will meet the requirements described in §1805.201(b) and paragraph (b) of this section within the period set forth in an applicable Notice of Funds Availability.

(ii) The CDFI Fund will not, however, make a payment of any financial assistance to such an entity before or unless it meets the requirements described in this section. Moreover, notwithstanding paragraphs (a)(1) and (a)(2)(i)(B) of this section, the CDFI Fund reserves the right to require an entity to have been certified as described in §1805.201(a) prior to its submission of an application for assistance, as set forth in an applicable Notice of Funds Availability.

(3) The CDFI Fund shall require an entity to meet any additional eligibility requirements that the CDFI Fund deems appropriate.

(4) The CDFI Fund, in its sole discretion, shall determine whether an entity fulfills the requirements set forth in this section and §1805.201(b).

(b) Provisions applicable to Depository Institution Holding Companies and Insured Depository Institutions. (1) A Depository Institution Holding Company may qualify as a CDFI only if it and its Affiliates collectively satisfy the requirements described in this section.

(2) No Affiliate of a Depository Institution Holding Company may qualify as a CDFI unless the holding company and all of its Affiliates collectively meet the requirements described in this section.

(3) No Subsidiary of an Insured Depository Institution may qualify as a CDFI if the Insured Depository Institution and its Subsidiaries do not collectively meet the requirements described in this section.

(4) For the purposes of paragraphs (b)(1) through (3) of this section, an entity will be considered to be a Subsidiary of any Insured Depository Institution or Depository Institution Holding Company that controls 25 percent or more of any class of the entity's voting shares, or otherwise controls, in any manner, the election of a majority of directors of the entity.

§ 1805.201 Certification as a Community Development Financial Institution.

(a) General. An entity may apply to the CDFI Fund for certification that it meets the CDFI eligibility requirements regardless of whether it is seeking financial or technical assistance from the CDFI Fund. Entities seeking such certification shall provide the information set forth in the application for certification. Certification by the CDFI Fund will verify that the entity meets the CDFI eligibility requirements. However, such certification shall not constitute an opinion by the CDFI Fund as to the financial viability of the CDFI or that the CDFI will be selected to receive an award from the CDFI Fund. The CDFI Fund, in its sole discretion, shall have the right to decertify a certified entity after a determination that the eligibility requirements of paragraph (b) of this section or §1805.200(b) are no longer met.

(b) Eligibility verification. An entity shall demonstrate whether it meets the eligibility requirements described in this paragraph (b) by providing the information described in the application for certification demonstrating that the entity meets the eligibility requirements described in paragraphs (b)(1) through (6) of this section. The CDFI Fund, in its sole discretion, shall determine whether an entity has satisfied the requirements of this paragraph.

(1) Primary mission. A CDFI must have a primary mission of promoting community development. In determining whether an entity has such a primary mission, the CDFI Fund will consider whether the activities of the entity are purposefully directed toward improving the

social and/or economic conditions of underserved people (which may include Low-Income persons or persons who lack adequate access to capital and/or Financial Services) and/or residents of economically distressed communities (which may include Investment Areas).

(2) Financing entity. (i) A CDFI shall be an entity whose predominant business activity is the provision, in arms-length transactions, of Financial Products and/or Financial Services. An entity may demonstrate that it meets this requirement if it is a(n):

(A) Depository Institution Holding Company;

(B) Insured Depository Institution, Insured Credit Union, or State-Insured Credit Union;

or

(C) Organization that is deemed by the CDFI Fund to have such a predominant business activity as a result of analysis of its financial statements, organizing documents, and any other information required to be submitted as part of its certification application. In conducting such analysis, the CDFI Fund may take into consideration an entity's total assets and its use of personnel.

(ii) For the sole purpose of participating as an Eligible CDFI in the CDFI Bond Guarantee Program (see 12 CFR1808), an Affiliate of a Controlling CDFI may be deemed to meet the financing entity requirement of this section by relying on the CDFI Fund's determination that the Controlling CDFI has met said requirement; provided, however, that the CDFI Fund reserves the right, in its sole discretion, to set additional parameters and restrictions on such, which parameters and restrictions shall be set forth in the applicable Notice of Guarantee Availability for a CDFI Bond Guarantee Program application round.

(iii) Further, for the sole purpose of participating as an Eligible CDFI in the CDFI Bond

Guarantee Program, the provision of Financial Products, Development Services, and/or other similar financing by an Affiliate of a Controlling CDFI need not be arms-length if such transaction is by and between the Affiliate and the Controlling CDFI, pursuant to an operating agreement that includes management and ownership provisions and is in form and substance acceptable to the CDFI Fund.

(3) Target Market—(i) General. A CDFI must serve a Target Market by virtue of serving one or more Investment Areas and/or Targeted Populations. An entity may demonstrate that it meets this requirement by demonstrating that it provides Financial Products and/or Financial Services in an Investment Areas and/or Targeted Populations as described in this section. An Investment Area shall meet specific geographic and other criteria described in paragraph (b)(3)(ii) of this section, and a Targeted Population shall meet the criteria described in paragraph (b)(3)(iii) of this section.

(ii) Investment Area—(A) General. A geographic area will be considered eligible for designation as an Investment Area if it:

(1) Is entirely located within the geographic boundaries of the United States (which shall encompass any State of the United States, the District of Columbia or any territory of the United States, Puerto Rico, Guam, American Samoa, the Virgin Islands, and the Northern Mariana Islands); and either

(2) Meets at least one of the objective criteria of economic distress as set forth in paragraph (b)(3)(ii)(D) of this section and has significant unmet needs for loans, Equity Investments, Financial Products or Financial Services as described in paragraph (b)(3)(ii)(E) of this section; or



(3) Encompasses (i.e., wholly consists of) or is wholly located within an Empowerment Zone or Enterprise Community designated under section 1391 of the Internal Revenue Code of 1986 (26 U.S.C. 1391).

(B) Geographic units. Subject to the remainder of this paragraph (B), an Investment Area shall consist of a geographic unit that is a county (or equivalent area), minor civil division that is a unit of local government, incorporated place, census tract, or Indian Reservation. However, geographic units in Metropolitan Areas that are used to comprise an Investment Area shall be limited to census tracts, and Indian Reservations. An entity may designate one or more Investment Areas as part of a single certification application.

(C) Designation. An entity may designate an Investment Area by selecting:

(1) A geographic unit(s) that individually meets one of the criteria in paragraph (b)(3)(ii)(D) of this section; or

(2) A group of contiguous geographic units that together meet one of the criteria in paragraph (b)(3)(ii)(D) of this section, provided that the combined population residing within individual geographic units not meeting any such criteria does not exceed 15 percent of the total population of the entire Investment Area.

(D) Distress criteria. An Investment Area (or the units that comprise an area) must meet at least one of the following objective criteria of economic distress (as reported in the most recently completed decennial census published by the U.S. Bureau of the Census):

(1) The percentage of the population living in poverty is at least 20 percent;

(2) In the case of an Investment Area located:

(i) Within a Metropolitan Area, the median family income shall be at or below 80 percent

of the Metropolitan Area median family income or the national Metropolitan Area median family income, whichever is greater; or

(ii) Outside of a Metropolitan Area, the median family income shall be at or below 80 percent of the statewide non-Metropolitan Area median family income or the national non-Metropolitan Area median family income, whichever is greater;

(3) The unemployment rate is at least 1.5 times the national average;

(4) In counties located outside of a Metropolitan Area, the county population loss during the period between the most recent decennial census and the previous decennial census is at least 10 percent; or

(5) In counties located outside of a Metropolitan Area, the county net migration loss during the five-year period preceding the most recent decennial census is at least five percent.

(E) Unmet needs. An Investment Area will be deemed to have significant unmet needs for loans or Equity Investments if a narrative analysis provided by the entity demonstrates a pattern of unmet needs for Financial Products or Financial Services within such area.

(F) Serving Investment Areas. An entity may serve an Investment Area directly or through borrowers or investees that serve the Investment Area.

(iii) Targeted Population—(A) General. Targeted Population shall mean individuals, or an identifiable group of individuals, who are Low-Income persons or lack adequate access to Financial Products or Financial Services in the entity's Target Market. The members of a Targeted Population shall reside within the boundaries of the United States (which shall encompass any State of the United States, the District of Columbia or any territory of the United States, Puerto Rico, Guam, American Samoa, the Virgin Islands, and the Northern Mariana

Islands).

(B) Serving Targeted Populations. An entity may serve the members of a Targeted Population directly or indirectly or through borrowers or investees that directly serve such members.

(4) Development Services. A CDFI directly, through an Affiliate, or through a contract with another provider, must have a track record of providing Development Services in conjunction with its Financial Products and/or Financial Services. An entity applying for CDFI certification must demonstrate that it meets this requirement.

(5) Accountability. A CDFI must maintain accountability to residents of its Investment Area(s) or Targeted Population(s) through representation on its governing board and/or advisory board(s). An entity applying for CDFI certification must demonstrate that it meets this requirement.

(6) Non-government. A CDFI shall not be an agency or instrumentality of the United States, or any State or political subdivision thereof. An entity applying for CDFI certification must demonstrate that it meets this requirement. An entity that is created by, or that receives substantial assistance from, one or more government entities may be a CDFI provided it is not Controlled by such entities and maintains independent decision-making power over its activities.

(c) Records and Review. The CDFI Fund will review a CDFI's certification status from time to time, as deemed appropriate by the CDFI Fund, to ensure that it meets the certification requirements of this section, as well as review its organizational capacity, lending activity, community impacts, and such other information that the CDFI Fund deems appropriate. Upon

request, a CDFI shall provide such information and documentation to the CDFI Fund as is necessary to undertake such review.

### Subpart C -- Use of Funds/Eligible Activities

#### § 1805.300 Purposes of financial assistance.

The CDFI Fund may provide financial assistance through investment instruments described under subpart D of this part. Such financial assistance is intended to increase available capital and enhance the ability of a Recipient to provide Financial Products, Financial Services, and Development Services.

#### § 1805.301 Eligible activities.

Recipients may use financial assistance provided under this part to serve Investment Area(s) or Targeted Population(s) by developing or supporting, through lending, investing, enhancing liquidity, or other means of finance:

(a) Commercial facilities that promote revitalization, community stability or job creation or retention;

(b) Businesses that:

(1) Provide jobs for Low-Income persons;

(2) Are owned by Low-Income persons; or

(3) Increase the availability of products and services to Low-Income persons;

(c) Community Facilities;

(d) The provision of Financial Services;

(e) Housing that is principally affordable to Low-Income persons, except that assistance used to facilitate homeownership shall only be used for services and lending products that serve

Low-Income persons and that:

- (1) Are not provided by other lenders in the area; or
- (2) Complement the services and lending products provided by other lenders that serve the Investment Area(s) or Targeted Population(s);
- (f) The provision of consumer loans (a loan to one or more individuals for household, family, or other personal expenditures); or
- (g) Other businesses or activities as requested by the Applicant and deemed appropriate by the CDFI Fund.

§ 1805.302 Restrictions on use of assistance.

(a) A Recipient shall use assistance provided by the CDFI Fund and its corresponding matching funds only for the eligible activities approved by the CDFI Fund and described in the Assistance Agreement.

(b) A Recipient may not distribute assistance to an Affiliate without the CDFI Fund's consent.

(c) Assistance provided upon approval of an application involving a Community Partnership shall only be distributed to the Recipient and shall not be used to fund any activities carried out by a Community Partner or an Affiliate of a Community Partner.

§ 1805.303 Technical assistance.

(a) General. The CDFI Fund may provide technical assistance to build the capacity of a CDFI or an entity that proposes to become a CDFI. Such technical assistance may include: training for management and other personnel; development of programs, products and services; improving financial management and internal operations; enhancing a CDFI's community

impact; or other activities deemed appropriate by the CDFI Fund. The CDFI Fund, in its sole discretion, may provide technical assistance in amounts or under terms and conditions that are different from those requested by an Applicant or Recipient. The CDFI Fund may not provide any technical assistance funding to an Applicant for the purpose of assisting in the preparation of an application for federal assistance. The CDFI Fund may provide technical assistance to a CDFI directly, through grants, or by contracting with organizations that possess the appropriate expertise.

(b) The CDFI Fund may provide technical assistance regardless of whether the Recipient also receives financial assistance under this part. Technical assistance provided pursuant to this part is subject to the assistance limits described in §1805.402.

(c) An Applicant seeking technical assistance must meet the eligibility requirements described in §1805.200 and submit an application as described in §1805.600.

(d) Applicants for technical assistance pursuant to this part will be evaluated pursuant to the merit-based qualitative review criteria in subpart G of this part, except as otherwise may be provided in the applicable Notice of Funds Availability. In addition, the requirements for matching funds are not applicable to technical assistance requests.

#### Subpart D -- Investment Instruments

##### § 1805.400 Investment instruments--general.

The CDFI Fund will provide financial assistance to a Recipient through one or more of the investment instruments described in §1805.401, and under such terms and conditions as described in this subpart D. The CDFI Fund, in its sole discretion, may provide financial assistance in amounts, through investment instruments, or under rates, terms and conditions that

are different from those requested by an Applicant.

§ 1805.401 Forms of investment instruments.

(a) Equity. The CDFI Fund may make non-voting equity investments in a Recipient, including, without limitation, the purchase of non-voting stock. Such stock shall be transferable and, in the discretion of the CDFI Fund, may provide for convertibility to voting stock upon transfer. The CDFI Fund shall not own more than 50 percent of the equity of a Recipient and shall not control its operations.

(b) Grants. The CDFI Fund may award grants.

(c) Loans. The CDFI Fund may make loans, if and as permitted by applicable law and regulation.

(d) Deposits and credit union shares. The CDFI Fund may make deposits (which shall include credit union shares) in Insured CDFIs and State-Insured Credit Unions. Deposits in an Insured CDFI or a State-Insured Credit Union shall not be subject to any requirement for collateral or security.

§ 1805.402 Assistance limits.

(a) General. Except as provided in paragraph (b) of this section, the Fund may not provide, pursuant to this part, more than \$5 million, in the aggregate, in financial and technical assistance to a Recipient and its Subsidiaries and Affiliates during any three-year period.

(b) Additional amounts. If a Recipient proposes to establish a new Subsidiary or Affiliate to serve an Investment Area(s) or Targeted Population(s) outside of any State, and outside of any Metropolitan Area, currently served by the Recipient or its Subsidiaries or Affiliates, the Recipient may receive additional assistance pursuant to this Part up to a maximum

of \$3.75 million during the same three-year period. Such additional assistance:

(1) Shall be used only to finance activities in the new or expanded Investment Area(s) or Targeted Population(s); and

(2) Must be distributed to a new Subsidiary or Affiliate that meets the eligibility requirements described in §1805.200 and is selected for assistance pursuant to subpart G of this part.

(c) A Recipient may receive the assistance described in paragraph (b) of this section only if no other application to serve substantially the same Investment Area(s) or Targeted Population(s) that meets the requirements of §1805.701(a) was submitted to the CDFI Fund prior to the receipt of the application of said Recipient and within the current funding round.

#### § 1805.403 Authority to sell.

The CDFI Fund may, at any time, sell its equity investments and loans, provided the CDFI Fund shall retain the authority to enforce the provisions of the Assistance Agreement until the performance goals specified therein have been met.

#### Subpart E -- Matching Funds Requirements

##### § 1805.500 Matching funds--general.

All financial assistance awarded under this part shall be matched with funds from sources other than the Federal government. Except as provided in §1805.502, such matching funds shall be provided on the basis of not less than one dollar for each dollar provided by the CDFI Fund. Funds that have been used to satisfy a legal requirement for obtaining funds under either the CDFI Program or another Federal grant or award program may not be used to satisfy the matching requirements described in this section. Community Development Block Grant



Program and other funds provided pursuant to the Housing and Community Development Act of 1974, as amended (42 U.S.C. 5301 et seq.), shall be considered Federal government funds and shall not be used to meet the matching requirements. Matching funds shall be used as provided in the applicable Notice of Funds Availability and/or the corresponding Assistance Agreement. Funds that are used prior to the execution of the Assistance Agreement may nevertheless qualify as matching funds provided they were used as provided in the applicable Notice of Funds Availability and/or Assistance Agreement.

§ 1805.501 Comparability of form and value.

(a) Matching funds shall be at least comparable in form (e.g., equity investments, deposits, credit union shares, loans and grants) and value to financial assistance provided by the CDFI Fund (except as provided in §1805.502). The CDFI Fund shall have the discretion to determine whether matching funds pledged are comparable in form and value to the financial assistance requested.

(b) In the case of a Recipient that raises matching funds from more than one source, through different investment instruments, or under varying terms and conditions, the CDFI Fund may provide financial assistance in a manner that represents the combined characteristics of such instruments.

(c) A Recipient may meet all or part of its matching requirements by committing available earnings retained from its operations.

§ 1805.502 Severe constraints waiver.

(a) In the case of an Applicant with severe constraints on available sources of matching funds, the CDFI Fund, in its sole discretion, may permit such Applicant to comply with the

matching requirements by:

(1) Reducing such requirements by up to 50 percent; or

(2) Permitting an Applicant to provide matching funds in a form to be determined at the discretion of the CDFI Fund, if such an Applicant:

(i) Has total assets of less than \$100,000;

(ii) Serves an area that is not a Metropolitan Area; and

(iii) Is not requesting more than \$25,000 in assistance.

(b) Not more than 25 percent of the total funds available for obligation under this part in any fiscal year may be matched as described in paragraph (a) of this section.

(c) The terms of the severe constraints waiver shall be provided in the applicable Notice of Funds Availability and Assistance Agreement.

#### § 1805.503 Time frame for raising match.

Applicants and Recipients shall satisfy matching funds requirements within the period set forth in the applicable Notice of Funds Availability and/or the corresponding Assistance Agreement.

#### § 1805.504 Retained earnings.

(a) General. An Applicant or Recipient may use its retained earnings to match a request for a financial assistance grant from the CDFI Fund. An Applicant or Recipient that proposes to meet all or a portion of its matching funds requirements by committing available retained earnings from its operations shall be subject to the restrictions described in this section. Retained earnings shall be calculated as directed by the CDFI Fund in the applicable Notice of Funds Availability, the financial assistance application, and/or related guidance materials. The CDFI

Fund shall make the final determination of the eligible amount of retained earnings that an Applicant or Recipient has available as matching funds.

(b) Applicants other than Insured Credit Unions, State-Insured Credit Unions and Insured Depository Institutions. In the case of an Applicant or Recipient that is not an Insured Credit Union, State-Insured Credit Union or Insured Depository Institution, retained earnings that may be used for matching funds purposes shall consist of:

(1) The increase in retained earnings (meaning, for purposes of §1805.504(b), revenue minus expenses less any dividend payments) that has occurred over the Applicant's or Recipient's fiscal year as set forth in the applicable Notice of Funds Availability; or

(2) The annual average of such increases that occurred over the Applicant's or Recipient's three consecutive fiscal years as set forth in the applicable Notice of Funds Availability.

(c) Insured Credit Unions, State-Insured Credit Unions, and Insured Depository Institutions. (1) In the case of an Applicant or Recipient that is an Insured Credit Union, State-Insured Credit Union or Insured Depository Institution, retained earnings that may be used for matching funds purposes shall consist of:

(i) The increase in retained earnings that has occurred over the Applicant's or Recipient's fiscal year as set forth in the applicable Notice of Funds Availability;

(ii) The annual average of such increases that has occurred over the Applicant's or Recipient's three consecutive fiscal years as set forth in the applicable Notice of Funds Availability; or

(iii) The entire retained earnings that have been accumulated since the inception of the

Applicant or Recipient, provided that the Assistance Agreement shall require that:

(A) The Recipient shall increase its member shares, non-member shares, outstanding loans and/or other measurable activity as defined in and by an amount that is set forth in an applicable Notice of Funds Availability;

(B) Such increase must be achieved by a date certain set forth in the applicable Notice of Funds Availability;

(C) The level from which the achievement of said increases will be measured will be as of the date set forth in the applicable Notice of Funds Availability; and

(D) Financial assistance shall be paid by the CDFI Fund only as the amount of increases described in paragraph (c)(1)(iii)(A) of this section is achieved.

(2) The CDFI Fund will allow an Applicant or Recipient to utilize the option described in paragraph (c)(1)(iii) of this section for matching funds only if it determines, in its sole discretion, that the Applicant or Recipient will have a high probability of success in achieving said increases to the specified amounts.

#### Subpart F -- Applications for Assistance

##### § 1805.600 Notice of Funds Availability.

Each Applicant shall submit an application for financial or technical assistance under this part in accordance with the applicable Notice of Funds Availability published in the Federal Register. The Notice of Funds Availability will advise prospective Applicants on how to obtain an application packet and will establish deadlines and other requirements. The Notice of Funds Availability may specify the application scoring criteria and any limitations, special rules, procedures, and restrictions for a particular funding round. After receipt of an application, the

CDFI Fund may request clarifying or technical information on the materials submitted as part of such application.

#### Subpart G--Evaluation and Selection of Applications

##### § 1805.700 Evaluation and selection--general.

Applicants will be evaluated and selected, at the sole discretion of the CDFI Fund, to receive assistance based on a review process that may include an interview(s) and/or site visit(s) and that is intended to:

(a) Ensure that Applicants are evaluated on a merit basis and in a fair and consistent manner;

(b) Consider the unique characteristics of Applicants that vary by institution type, total asset size, stage of organizational development, markets served, products and services provided, and location;

(c) Ensure that each Recipient can successfully meet the goals of its Comprehensive Business Plan and achieve community development impact;

(d) Ensure that Recipients represent a geographically diverse group of Recipients serving Metropolitan Areas, non-Metropolitan Areas, and Indian Reservations from different regions of the United States; and

(e) Consider other factors as described in the applicable Notice of Funds Availability.

##### § 1805.701 Evaluation of applications.

(a) Eligibility and completeness. An Applicant will not be eligible to receive assistance pursuant to this part if it fails to meet the eligibility requirements described in §1805.200 or if it has not submitted complete application materials. For the purposes of this paragraph (a), the

CDFI Fund reserves the right to request additional information from the Applicant, if the CDFI Fund deems it appropriate.

(b) Substantive review. In evaluating and selecting applications to receive assistance, the CDFI Fund will evaluate the feasibility of the Applicant's Comprehensive Business Plan goals, the likelihood of the Applicant meeting such goals, and the likelihood of the Applicant achieving its proposed community development impacts, by considering factors such as:

(1) Community development track record, including, in the case of an Applicant with a prior history of serving a Target Market, the extent of success in serving such Target Market and whether it will expand its operations into a new Investment Area or serve a new Targeted Population, offer more Development Services, Financial Products and/or Financial Services, or increase the volume of its current business;

(2) Operational capacity and risk mitigation strategies;

(3) Financial track record and strength;

(4) Capacity, skills, experience and background of the management team;

(5) Understanding of its market context, including an analysis of the needs of the Investment Area or Targeted Population and a strategy for how the Applicant will attempt to meet those needs; such analysis of current and prospective customers will include the extent of economic distress within the designated Investment Area(s) or the extent of need within the designated Targeted Population(s), as those factors are measured by objective criteria, the extent of need for Loans, Equity Investments, Financial Products, Financial Services and Development Services within the designated Target Market, and the extent of demand within the Target Market for the Applicant's products and services;

(6) Program design and implementation plan, including: a plan to coordinate use of a financial assistance award with existing Federal State, local and Tribal government assistance programs, and private sector financial services; a description of how the Applicant will coordinate with community organizations and financial institutions which will provide equity investments, loans, secondary markets, or other services to the Investment Area or Targeted Population; an assessment of its products and services, marketing and outreach efforts, delivery strategy, and coordination with other institutions and/or a Community Partner, or participation in a secondary market for purposes of increasing the Applicant's resources. In the case of an Applicant submitting an application with a Community Partner, the CDFI Fund will evaluate: the extent to which the Community Partner will participate in carrying out the activities of the Community Partnership; the extent to which the Community Partner will enhance the likelihood of success of the Comprehensive Business Plan; and the extent to which service to the designated Target Market will be better performed by a Community Partnership than by the Applicant alone;

(7) Projections for financial performance, capitalization and the raising of needed external resources, including a detailed description of the Applicant's plans and likely sources of funds to match the amount of financial assistance requested from the CDFI Fund, the amount of firm commitments and matching funds in hand to meet or exceed the matching funds requirements and, if applicable, the likely success of the plan for raising the balance of the matching funds in a timely manner, the extent to which the matching funds are, or will be, derived from private sources, and whether an Applicant is, or will become, an Insured CDFI or a State-Insured Credit Union;

(8) Projections for community development impact, including the extent to which an Applicant will concentrate its activities on serving its Target Market(s), the extent of support from the designated Target Market, the extent to which an Applicant is, or will be, Community-Owned or Community-Governed, and the extent to which the activities proposed in the Comprehensive Business Plan are consistent with existing economic, community, and housing development plans adopted by or applicable to the Investment Area or Targeted Population and will expand economic opportunities or promote community development within the designated Target Market;

(9) The extent of need for the CDFI Fund's assistance, as demonstrated by the extent of economic distress in the Applicant's Target Market and the extent to which the Applicant needs the CDFI Fund's assistance to carry out its Comprehensive Business Plan;

(10) In the case of an Applicant that has previously received assistance under the CDFI Program, the CDFI Fund also will consider the Applicant's level of success in meeting its performance goals, financial soundness covenants (if applicable), and other requirements contained in the previously negotiated and executed Assistance Agreement(s) with the CDFI Fund, the unexpended balance of assistance, and whether the Applicant will, with additional assistance from the CDFI Fund, expand its operations into a new Target Market, offer more products or services, and/or increase the volume of its activities; and

(11) The CDFI Fund may consider any other factors, as it deems appropriate, in reviewing an application as set forth in an applicable Notice of Funds Availability.

(c) Consultation with Appropriate Federal Banking Agencies. The CDFI Fund will consult with, and consider the views of, the Appropriate Federal Banking Agency prior to



providing assistance to:

- (1) An Insured CDFI;
- (2) A CDFI that is examined by or subject to the reporting requirements of an Appropriate Federal Banking Agency; or
- (3) A CDFI that has as its Community Partner an institution that is examined by, or subject to, the reporting requirements of an Appropriate Federal Banking Agency.
- (d) Consultation with Appropriate State Agencies. Prior to providing assistance to a State-Insured Credit Union, the CDFI Fund may consult with, and consider the views of, the Appropriate State Agency.
- (e) Recipient selection. The CDFI Fund will select Recipients based on the criteria described in paragraph (b) of this section and any other criteria set forth in this part or the applicable Notice of Funds Availability.

#### Subpart H--Terms and Conditions of Assistance

##### § 1805.800 Safety and soundness.

(a) Regulated institutions. Nothing in this part, or in an Assistance Agreement, shall affect any authority of an Appropriate Federal Banking Agency or Appropriate State Agency to supervise and regulate any institution or company.

(b) Non-Regulated CDFIs. The CDFI Fund will, to the maximum extent practicable, ensure that Recipients that are Non-Regulated CDFIs are financially and managerially sound and maintain appropriate internal controls.

##### § 1805.801 Assistance Agreement; sanctions.

(a) Prior to providing any Financial or Technical Assistance, the CDFI Fund and a

Recipient shall execute an Assistance Agreement that requires a Recipient to comply with performance goals and abide by other terms and conditions of assistance. Such performance goals may be modified at any time by mutual consent of the CDFI Fund and a Recipient or as provided in paragraph (c) of this section. If a Community Partner or an Affiliate is part of an application that is selected for assistance, such partner must be a party to the Assistance Agreement, if deemed appropriate by the CDFI Fund.

(b) A Recipient shall comply with performance goals that have been established or negotiated with the CDFI Fund and which are based upon the Comprehensive Business Plan submitted as part of the Recipient's application. Such performance goals may include measures that require a Recipient to:

- (1) Be financially sound;
- (2) Be managerially sound;
- (3) Maintain appropriate internal controls; and/or
- (4) Achieve specific lending, investment, and development service objectives.

Performance goals for Insured CDFIs shall be determined in consultation with the Appropriate Federal Banking Agency, as applicable. Such goals shall be incorporated in, and enforced under, the Recipient's Assistance Agreement. Performance goals for State-Insured Credit Unions may be determined in consultation with the Appropriate State Agency, if deemed appropriate by the CDFI Fund.

(c) The Assistance Agreement shall provide that, in the event of fraud, mismanagement, noncompliance with the Act and the CDFI Fund's regulations, or noncompliance with the terms and conditions of the Assistance Agreement on the part of the Recipient (or the Community

Partner, if applicable), the CDFI Fund, in its discretion, may:

- (1) Require changes in the performance goals set forth in the Assistance Agreement;
- (2) Require changes in the Recipient's Comprehensive Business Plan;
- (3) Revoke approval of the Recipient's application;
- (4) Reduce or terminate the Recipient's assistance;
- (5) Require repayment of any assistance that has been distributed to the Recipient;
- (6) Bar the Recipient from reapplying for any assistance from the CDFI Fund; or
- (7) Take such other actions as the CDFI Fund deems appropriate.

(d) In the case of an Insured CDFI, the Assistance Agreement shall provide that the provisions of the Act, this part, and the Assistance Agreement shall be enforceable under 12 U.S.C. 1818 of the Federal Deposit Insurance Act by the Appropriate Federal Banking Agency, as applicable, and that any violation of such provisions shall be treated as a violation of the Federal Deposit Insurance Act. Nothing in this paragraph (d) precludes the CDFI Fund from directly enforcing the Assistance Agreement as provided for under the terms of the Act.

(e) The CDFI Fund shall notify the Appropriate Federal Banking Agency before imposing any sanctions on an Insured CDFI or other institution that is examined by or subject to the reporting requirements of that agency. The CDFI Fund shall not impose a sanction described in paragraph (c) of this section if the Appropriate Federal Banking Agency, in writing, and to the satisfaction of the CDFI Fund, not later than 30 calendar days after receiving notice from the CDFI Fund:

- (1) Objects to the proposed sanction;
- (2) Determines that the sanction would:

- (i) Have a material adverse effect on the safety and soundness of the institution; or
- (ii) Impede or interfere with an enforcement action against that institution by that agency;
- (3) Proposes a comparable alternative action; and
- (4) Specifically explains:

(i) The basis for the determination under paragraph (e)(2) of this section and, if appropriate, provides documentation to support the determination; and

(ii) How the alternative action suggested pursuant to paragraph (e)(3) of this section would be as effective as the sanction proposed by the CDFI Fund in securing compliance and deterring future noncompliance.

(f) In reviewing the performance of a Recipient in which its Investment Area(s) includes an Indian Reservation or Targeted Population(s) includes an Indian Tribe, the CDFI Fund shall consult with, and seek input from, the appropriate tribal government.

(g) Prior to imposing any sanctions pursuant to this section or an Assistance Agreement, the CDFI Fund shall, to the maximum extent practicable, provide the Recipient (or the Community Partner, if applicable) with written notice of the proposed sanction and an opportunity to comment. Nothing in this section, however, shall provide a Recipient or Community Partner with the right to any formal or informal hearing or comparable proceeding not otherwise required by law.

#### § 1805.802 Payment of funds.

Assistance provided pursuant to this part may be provided in a lump sum or over a period of time, as determined appropriate by the CDFI Fund. The CDFI Fund shall not provide any assistance under this part until a Recipient has satisfied any required conditions set forth in its

Assistance Agreement and, if the Recipient is to receive financial assistance, the Recipient has secured in-hand and/or firm commitments for the matching funds required for such assistance pursuant to the applicable Notice of Funds Availability.

§ 1805.803 Data collection and reporting.

(a) Data--General. A Recipient shall maintain such records as may be prescribed by the CDFI Fund that are necessary to:

- (1) Disclose the manner in which CDFI Fund assistance is used;
- (2) Demonstrate compliance with the requirements of this part and an Assistance Agreement; and
- (3) Evaluate the impact of the CDFI Program.

(b) Customer profiles. A Recipient (and a Community Partner, if appropriate) shall compile such data on the gender, race, ethnicity, national origin, or other information on individuals that utilize its products and services as the CDFI Fund shall prescribe in an Assistance Agreement. Such data will be used to determine whether residents of Investment Area(s) or members of Targeted Population(s) are adequately served and to evaluate the impact of the CDFI Program.

(c) Access to records. A Recipient (and a Community Partner, if appropriate) must submit such financial and activity reports, records, statements, and documents at such times, in such forms, and accompanied by such reporting data, as required by the CDFI Fund or the Department of the Treasury to ensure compliance with the requirements of this part and to evaluate the impact of the CDFI Program. The United States Government, including the Department of the Treasury, the Comptroller General, and their duly authorized representatives,

shall have full and free access to the Recipient's offices and facilities and all books, documents, records, and financial statements relating to use of Federal funds and may copy such documents as they deem appropriate. The CDFI Fund, if it deems appropriate, may prescribe access to record requirements for entities that are borrowers of, or that receive investments from a Recipient.

(d) Retention of records. A Recipient shall comply with all record retention requirements as set forth in the Uniform Requirements (as applicable).

(e) Data collection and reporting. Each Recipient shall submit to the CDFI Fund information and documentation that will permit the CDFI Fund to review the Recipient's progress (and the progress of its Affiliates, Subsidiaries, and/or Community Partners, if appropriate) in implementing its Comprehensive Business Plan and satisfying the terms and conditions of its Assistance Agreement. The information and documentation shall include, but not be limited to, an audit and an annual report, which shall comprise the following components:

(1) Audits and Audited Financial Statements. (i) All non-profit organizations that are required to have their financial statements audited pursuant to the Uniform Requirements, must submit their single-audits no later than nine months after the end of the Recipient's fiscal year. Non-profit organizations (excluding Insured CDFIs and State-Insured Credit Unions) that are not required to have financial statements audited pursuant to the Uniform Requirements, must submit to the CDFI Fund a statement signed by the Recipient's Authorized Representative or certified public accountant, asserting that the Recipient is not required to have a single audit pursuant to the Uniform Requirements as indicated in the Assistance Agreement. In such instances, the CDFI Fund may require

additional audits to be performed as stated in the applicable Notice of Funds Availability.

(ii) For-profit organizations (excluding Insured CDFIs and State-Insured Credit Unions) must submit to the CDFI Fund financial statements audited in conformity with generally accepted auditing standards as promulgated by the American Institute of Certified Public Accountants, no later than six months after the end of the Recipient's fiscal year.

(iii) Insured CDFIs are not required to submit financial statements to the CDFI Fund. The CDFI Fund will obtain the necessary information from publicly available sources. State-Insured Credit Unions must submit to the CDFI Fund copies of the financial statements that they submit to the Appropriate State Agency.

(iv) If multiple for-profit organizations sign the Assistance Agreement: The Recipient may submit combined financial statements and footnotes for the Recipient and other entities that signed the Assistance Agreement as long as the financial statements of each signatory are shown separately (for example, in combining financial statements).

(2) Annual Report. (i) Each Recipient shall submit to the CDFI Fund a performance and financial report at the times that shall be specified in the Assistance Agreement (Annual Report). The Annual Report consists of several components which may include, but are not limited to, an institution level report, transaction level report, use of financial or technical assistance report, explanation of any Recipient noncompliance, and shareholder report. The Annual Report components shall be specified and described in the Assistance Agreement.

(ii) The CDFI Fund will use the Annual Report to collect data to assess the Recipient's compliance with its Performance Goals and the impact of the CDFI Program and the CDFI industry.

(iii) Recipients are responsible for the timely and complete submission of the Annual Report, even if all or a portion of the documents actually are completed by another entity or signatory to the Assistance Agreement. If such other entities or signatories are required to provide Annual Reports, or other documentation that the CDFI Fund may require, the Recipient is responsible for ensuring that the information is submitted timely and complete. The CDFI Fund reserves the right to contact such additional signatories to the Assistance Agreement and require that additional information and documentation be provided.

(3) The CDFI Fund's review of the progress of an Insured CDFI, a Depository Institution Holding Company or a State-Insured Credit Union in implementing its Comprehensive Business Plan and satisfying the terms and conditions of its Assistance Agreement may also include information from the Appropriate Federal Banking Agency or Appropriate State Agency, as the case may be.

(4) Public Access. The CDFI Fund shall make reports described in this section available for public inspection after deleting or redacting any materials necessary to protect privacy or proprietary interests.

(f) Exchange of information with Appropriate Federal Banking Agencies and Appropriate State Agencies. (1) Except as provided in paragraph (f)(4) of this section, prior to directly requesting information from or imposing reporting or record keeping requirements on an Insured CDFI or other institution that is examined by or subject to the reporting requirements of an Appropriate Federal Banking Agency, the CDFI Fund shall consult with the Appropriate Federal Banking Agency to determine if the information requested is available from or may be obtained by such agency in the form, format, and detail required by the CDFI Fund.



(2) If the information, reports, or records requested by the CDFI Fund pursuant to paragraph (f)(1) of this section are not provided by the Appropriate Federal Banking Agency within 15 calendar days after the date on which the material is requested, the CDFI Fund may request the information from or impose the record keeping or reporting requirements directly on such institutions with notice to the Appropriate Federal Banking Agency.

(3) The CDFI Fund shall use any information provided by an Appropriate Federal Banking Agency or Appropriate State Agency under this section to the extent practicable to eliminate duplicative requests for information and reports from, and record keeping by, an Insured CDFI, State-Insured Credit Union or other institution that is examined by or subject to the reporting requirements of an Appropriate Federal Banking Agency or Appropriate State Agency.

(4) Notwithstanding paragraphs (f)(1) and (2) of this section, the CDFI Fund may require an Insured CDFI, State-Insured Credit Union, or other institution that is examined by or subject to the reporting requirements of an Appropriate Federal Banking Agency or Appropriate State Agency to provide information with respect to the institution's implementation of its Comprehensive Business Plan or compliance with the terms of its Assistance Agreement, after providing notice to the Appropriate Federal Banking Agency or Appropriate State Agency, as the case may be.

(5) Nothing in this part shall be construed to permit the CDFI Fund to require an Insured CDFI, State-Insured Credit Union, or other institution that is examined by or subject to the reporting requirements of an Appropriate Federal Banking Agency or Appropriate State Agency to obtain, maintain, or furnish an examination report of any Appropriate Federal Banking

Agency or Appropriate State Agency, or records contained in or related to such report.

(6) The CDFI Fund and the Appropriate Federal Banking Agency shall promptly notify each other of material concerns about a Recipient that is an Insured CDFI or that is examined by or subject to the reporting requirements of an Appropriate Federal Banking Agency, and share appropriate information relating to such concerns.

(7) Neither the CDFI Fund nor the Appropriate Federal Banking Agency (or Appropriate State Agency, as the case may be) shall disclose confidential information obtained pursuant to this section from any party without the written consent of that party.

(8) The CDFI Fund, the Appropriate Federal Banking Agency (or Appropriate State Agency, as the case may be), and any other party providing information under this paragraph (f) shall not be deemed to have waived any privilege applicable to the any information or data, or any portion thereof, by providing such information or data to the other party or by permitting such data or information, or any copies or portions thereof, to be used by the other party.

#### § 1805.804 Information.

The CDFI Fund and each Appropriate Federal Banking Agency shall cooperate and respond to requests from each other and from other Appropriate Federal Banking Agencies in a manner that ensures the safety and soundness of Insured CDFIs or other institution that is examined by or subject to the reporting requirements of an Appropriate Federal Banking Agency.

#### § 1805.805 Compliance with government requirements.

In carrying out its responsibilities pursuant to an Assistance Agreement, the Recipient shall comply with all applicable Federal, State, and local laws, regulations, and ordinances, OMB

Circulars, and Executive Orders. Furthermore, Recipients must comply with the CDFI Fund's Environmental Quality Regulations (12 CFR part 1815) as well as all other federal environmental requirements applicable to federal awards.

§ 1805.806 Conflict of interest requirements.

(a) Provision of credit to Insiders. (1) A Recipient that is a Non-Regulated CDFI may not use any monies provided to it by the CDFI Fund to make any credit (including loans and Equity Investments) available to an Insider, unless it meets the following restrictions:

(i) The credit must be provided pursuant to standard underwriting procedures, terms and conditions;

(ii) The Insider receiving the credit, and any family member or business partner thereof, shall not participate in any way in the decision making regarding such credit;

(iii) The board of directors or other governing body of the Recipient shall approve the extension of the credit; and

(iv) The credit must be provided in accordance with a policy regarding credit to Insiders that has been approved in advance by the CDFI Fund.

(2) A Recipient that is an Insured CDFI, a Depository Institution Holding Company or a State-Insured Credit Union shall comply with the restrictions on Insider activities and any comparable restrictions established by its Appropriate Federal Banking Agency or Appropriate State Agency, as applicable.

(b) Recipient standards of conduct. A Recipient that is a Non-Regulated CDFI shall maintain a code or standards of conduct acceptable to the CDFI Fund that shall govern the performance of its Insiders engaged in the awarding and administration of any credit (including

loans and Equity Investments) and contracts using monies from the CDFI Fund. No Insider of a Recipient shall solicit or accept gratuities, favors, or anything of monetary value from any actual or potential borrowers, owners, or contractors for such credit or contracts. Such policies shall provide for disciplinary actions to be applied for violation of the standards by the Recipient's Insiders.

§ 1805.807 Lobbying restrictions.

No assistance made available under this part may be expended by a Recipient to pay any person to influence or attempt to influence any agency, elected official, officer or employee of a State or local government in connection with the making, award, extension, continuation, renewal, amendment, or modification of any State or local government contract, grant, loan or cooperative agreement as such terms are defined in 31 U.S.C. 1352.

§ 1805.808 Criminal provisions.

The criminal provisions of 18 U.S.C. 657 regarding embezzlement or misappropriation of funds are applicable to all Recipients and Insiders.

§ 1805.809 CDFI Fund deemed not to control.

The CDFI Fund shall not be deemed to Control a Recipient by reason of any assistance provided under the Act for the purpose of any applicable law.

§ 1805.810 Limitation on liability.

The liability of the CDFI Fund and the United States Government arising out of any assistance to a CDFI in accordance with this part shall be limited to the amount of the investment in the CDFI. The CDFI Fund shall be exempt from any assessments and other liabilities that may be imposed on controlling or principal shareholders by any Federal law or the law of any

State. Nothing in this section shall affect the application of any Federal tax law.

§ 1805.811 Fraud, waste and abuse.

Any person who becomes aware of the existence or apparent existence of fraud, waste, or abuse of assistance provided under this part should report such incidences to the Office of Inspector General of the U.S. Department of the Treasury.

Mary Ann Donovan,

Director,

Community Development Financial Institutions Fund

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